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OFFICE OF PETITIONS

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| In re Application of | : | |
| Adapathya et al. | : | DECISION ON PETITION TO |
| Application No. 09/404,182 | : | WITHDRAW HOLDING OF |
| Filed: 24 September, 1999 | : | ABANDONMENT |
| Attny Docket No. RP9-99-111 | : | |

This is a decision on the petition filed on 12 June, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit the issue fee in response to the Notice of Allowance and Fee(s) Due mailed on 5 August, 2004. Notice of Abandonment was mailed on 11 May, 2006.

Petitioner asserts that the Notice mailed on 5 August, 2004, was not received because it was mailed to the wrong address due to USPTO error. Specifically, petitioner asserts that a Change of Correspondence Address was filed on 11 May, 2004, but that the Notice of Allowance and Fee(s) Due mailed on 5 August, 2004, was mailed to the previous address.

In the absence of any irregularity in the mailing of the final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's

statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the official file reveals that on 11 May, 2004, a Change of Correspondence Address was filed listing the new correspondence address as "8911 North Capital of Texas Highway, Suite 2110, Austin TX 78759." However, the Notice mailed on 5 August, 2004, was mailed to "7600B North Capital of Texas Highway, Suite 350, Lakewood on the Park, Austin TX 78731." Additionally, the Notice mailed on 5 August, 2004, was returned to the Office as undeliverable on 25 August, 2004. As such, the showing of record is that there was an irregularity in the mailing of the Notice mailed on 5 August, 2004, in that said Notice was not mailed to the current correspondence address.

Consequently, there was no abandonment in fact.

The Office apologizes for any inconvenience to petitioners.

Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The application file will be referred to the Technology Center's Technical Support Staff for remailing of the Notice mailed on 5 August, 2004.

The application is being referred to Technology Center Art Unit 2629 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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Office of Petitions